



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

April 26, 2023

Risher G. Caves, Esq.
Board Attorney, Perry County School District
Post Office Drawer 167
Laurel, Mississippi 39441-0167

Re: Retroactive Employee Compensation Due to School District Delay

Dear Mr. Caves:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, the Perry County Board of Education (the “Board”) hired an individual for the position of Accountability/Licensure Certification Director for the 2022-2023 school year and later approved the same individual for two supplemental contract positions effective July 1, 2022. The individual has since fulfilled these job duties and responsibilities.

However, because the supplemental salaries would have placed the individual’s combined salary above the salary cap on the school district’s administrative pay scale, the individual was not paid for the supplemental positions until the Board approved a recommendation to amend the administrative pay scale to exclude supplements from the salary cap computation at its September meeting. This Board action permitted the Perry County School District (the “District”) to compensate the individual prospectively for the two supplemental positions.

Question Presented

Does the Board’s delay in amending the District’s administrative salary cap to exclude supplemental pay from the computation of the salary cap qualify under the “administrative error” exception to Article IV, Section 96 of the Mississippi Constitution so as to permit the District to compensate the individual for the two supplemental positions for which she was hired and for which she fulfilled job duties and responsibilities from July 1, 2022 through September 26, 2022?

Brief Response

Whether an employee was underpaid due to an administrative error is a factual determination that must be resolved by the Board. For additional guidance regarding this matter, we recommend that you contact the Office of the State Auditor.

Applicable Law and Discussion

Section 96 prohibits the payment of extra compensation to any public officer, agent, servant, or contractor after a contract of employment is made. MISS. CONST. art. IV, § 96. Accordingly, this office has consistently opined that “Section 96 strictly forbids payment of ‘retroactive raises’ to any public employee, unless such payment is clearly shown to be ‘back pay’ previously due, but unpaid because of *administrative error*.” MS AG Op., *Brown* at *1 (July 7, 2017) (emphasis added) (internal citations omitted).

Whether the delay in amending the administrative salary cap would qualify as an “administrative error” is a factual question upon which this office cannot opine. MS AG Op., *Mosley* at *2 n.1 (Feb. 21, 2014). *See also* MS AG Op., *Sturgeon* at *2 (Aug. 14, 2006) (“[W]hether the employee was underpaid due to an administrative error [is a] factual question[] which must be resolved by the School Board after a review of the Board minutes and the recommendations of the superintendent.”). It is the recommendation of this office that you contact the Office of the State Auditor for guidance in making this factual determination.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ *Maggie Kate Bobo*

Maggie Kate Bobo
Special Assistant Attorney General